

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-61 are presently active in this case. The present Amendment amends Claims 1, 16, and 21; it further adds Claims 22-61.

In the outstanding Office Action, Claim 21 was rejected under 35 U.S.C. § 112, second paragraph, for lack of antecedence basis. Claims 1-15 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of co-pending Application No. 10/282,329. Claims 1-6, 11, and 14-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by Crowne et al. (U.S. Patent No. 5,723,870). Claims 1-5, 7, 10, 11, and 15-20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Belk et al. (U.S. Patent No. 5,969,260). Claims 1, 7-11, 16, and 18-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Henry et al. (U.S. Application Publication No. 2003/0187554). Claims 1-5, 7-11, and 16-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Haugse et al. (U.S. Application Publication No. 2003/0191564). Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Haugse et al. in view of Johnson et al. (U.S. Patent No. 5,359,446). Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Haugse et al. in view of Ellinger et al. (U.S. Patent No. 5,880,480).

In response to the rejection of Claim 21 under 35 U.S.C. § 112, second paragraph, Claim 21 is amended to be dependent from Claim 19 so as to provide antecedence basis. It is believed that all pending claims are definite and no further rejection on that basis is anticipated.

In response to the rejection under the judicially created doctrine of double patenting, Applicants herewith file a terminal disclaimer in compliance with 37 C.F.R. § 1.321 thereby

overcoming the double patenting rejection of Claims 1-15. For the record, Applicants note that the “filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.”¹

In response to the rejections of Claims 1-11 and 14-15 under either 35 U.S.C. § 102(b), 35 U.S.C. § 102(e), or 35 U.S.C. § 103(a), Claim 1 is amended to recite that the system comprises “means for generating energy for said means for monitoring, wherein said means for generating energy comprises means for converting energy taken from surroundings of said means for generating energy.” New Claim 22 specifies that the means include solar energy converters and Claim 23 specifies that the means include means for converting vibrating occurring in the aircraft. These features find non-limiting support in the disclosure as originally filed (see, e.g., page 7, lines 13-17). In light of amended Claim 1, Applicant respectfully requests reconsideration of these rejections and traverses the rejections as follows.

The Crowne et al. patent discloses an apparatus for detecting fluid level in a container using magnetostrictive sensors and means of wireless interrogation of the sensors. However, the Crowne et al. patent fails to teach “means for generating energy for said means for monitoring, wherein said means for generating energy comprises means for converting energy taken from surroundings of said means for generating energy.” In the Crowne et al. apparatus, the sensors are powered instead by electromagnetic energy emanating from the remote unit (see column 5, lines 2-5; and reference 32 in figures 1A and 2) and can thus only function when powered by an operator using the hand held unit (34) to provide the necessary electromagnetic energy (32). The Crowne et al. patent also fails to teach the specific

¹ Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 874, 20 USPQ2d 1392, 1394-5 (Fed. Cir. 1991).

converters specified in new Claims 22 and 23. As a consequence, the Crowne et al. apparatus does not include the means recited in Claims 1-15.

The Belk et al. patent does not disclose the above features either because a remote interrogating signal is again responsible for energizing the discontinuity sensor (see column 6, lines 53-56).

The Office Action does not allege that the Henry et al. publication discloses these features. The Haugse et al. application mentions the use of batteries at paragraph [0017]. However, batteries do not include means for converting energy taken from surroundings of the batteries nor the specific converters recited in Claims 22 and 23. It is therefore respectfully requested that the rejections of Claims 1-15 based on 35 U.S.C. § 102(b) and/or 35 U.S.C. § 102(e) be withdrawn.

In response to the rejections of Claims 16-21 under either 35 U.S.C. § 102(b) or 35 U.S.C. § 102(e), Claim 16 is amended to recite that the method comprises “generating energy during flight by converting energy taken from surroundings of a sensor,” and that sensing is accomplished “using said energy with said sensor.” These features find non-limiting support in the disclosure as originally filed (see, e.g., page 7, lines 14-17; page 2, lines 18-20; and Claim 8). In light of amended Claim 16, Applicant respectfully requests reconsideration of these rejections and traverses the rejections as follows.

As discussed above, the Crowne et al. and Belk et al. patents disclose sensing devices powered only by the interrogation signal supplied by the external hand held unit. As such, the aircraft must be on the ground and the hand held unit used by an operator to perform sensing. Consequently, these patents do not teach the “during flight” feature. The Henry et al. publication does not teach generating energy for a sensor, much less converting energy taken from surroundings of a sensor. In fact, this publication does not even disclose sensors, but rather focuses on how information might be stored if such sensors were available.

Finally, the Haugse et al. publication, as discussed above, mentions the use of batteries to power the sensors [0017]. However, batteries do not *generate* energy taken from surroundings of a sensor; they merely provide a means to store a finite amount of energy. It is therefore respectfully requested that the rejections of Claims 16-21 based on 35 U.S.C. § 102(b) and/or 35 U.S.C. § 102(e) be withdrawn.

Accordingly, the prior art fails to teach or suggest every feature recited in Applicant's independent Claims 1 and 16, so that Claims 1-23 are patentably distinct over the prior art. Therefore, Applicant respectfully traverses, and requests reconsideration of, the rejections based on the Crowne et al. and Belk et al. patents and Henry et al. and Haugse et al. applications.²

In order to vary the scope of protection recited in the claims, new Claims 22-61 are added. As noted above, new Claims 22 and 23 depend on Claim 1 and specify possible means of generating energy for the system, which find support in the disclosure as filed originally, for example at page 7, lines 13-17. The new sets of Claims 24-42 and 43-61 recite features similar to those recited in original Claims 1-21. Therefore, new claims 24-61 find non-limiting support in the disclosure as originally filed.³ Therefore, the changes to the claims are not believed to raise a question of new matter.⁴

New independent Claim 24 recites a "wing flap component" and new independent Claim 43 recites a "hydraulic component." Claims 24-61 are believed to be patentably distinct over the applied prior art, at least for the same reasons stated at page 9 of the outstanding Office Action regarding Claims 12 and 13.

² See MPEP 2131: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," (Citations omitted) (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."

³ See also page 8, lines 1-21 with corresponding Figure 2; page 8, lines 22-35; and page 9, lines 1-5 with corresponding Figure 3, for example.

⁴ See MPEP 2163.06 stating that "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

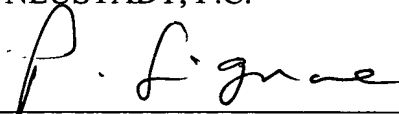
Application No. 10/712,008
Reply to Office Action of July 8, 2004

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-61 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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